

REPORTER'S RECORD
VOLUME 5 OF 7 VOLUMES
TRIAL COURT CAUSE NO. 09-02494-CRF
APPELLATE COURT CAUSE NO. 10-10-00297-CRF-272

THE STATE OF TEXAS) IN THE DISTRICT COURT
vs.) BRAZOS COUNTY, TEXAS
GREGG CARL BAIRD) 272ND JUDICIAL DISTRICT

SENTENCING PHASE

 ORIGINAL

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COURT OF APPEALS
WACO, TEXAS

On the 28th day of July, 2010, the following
proceedings came on to be held in the above-titled
and numbered cause before the Honorable Travis B.
Bryan, III, Judge Presiding, held in Bryan, Brazos
County, Texas.

Proceedings reported by computerized stenotype
machine.

FILED
TENTH COURT OF APPEALS

FEB 07 2011

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1 P R O C E E D I N G S

2 (July 28, 2010, Open Court, Defendant

3 Present, No Jury)

4 THE COURT: All right. State v. Gregg
5 Baird, the punishment phase.

6 Opening statements?

7 MR. PHELPS: Your Honor, just a few
8 things.

9 THE COURT: Just some housekeeping
10 matters?

11 MR. PHELPS: Yes, housekeeping matters.
12 I don't think that the State's case will take more
13 than a couple of hours. I think we can probably be
14 done by 11:00 o'clock.

15 THE COURT: Okay.

16 **OPENING STATEMENT**

17 MR. PHELPS: First of all, all of the
18 evidence that we will be offering, the physical
19 evidence -- computers, hard drives, books and other
20 things -- all of those pieces of evidence are coming
21 from the search that was conducted at the Defendant's
22 house, came from his bedroom; and I think Mr. James
23 wanted to put out there that what we're offering was
24 actually subject to search warrants.

25 MR. JAMES: Yes, sir.

1 THE COURT: All right. That will be
2 noted for the record.

3 MR. PHELPS: So we will have three
4 witnesses for you today, Judge. I'm going to call
5 Nathan McCune, who is our investigator who does
6 forensic computer examinations to give the Court some
7 sense of the kind of evidence we're talking about.

8 The only thing that I think will be an
9 issue for the Court or an issue for Mr. James is that
10 while we want to give the Court as full a picture as
11 we can of both the child pornography possessed by the
12 Defendant, we also want to give the Court pursuant to
13 what we normally do in the punishment phase as full a
14 picture of the Defendant as we can.

15 There will be a couple of exhibits that
16 will be offered to show the Defendant, photographs
17 that were taken from the Defendant's computer of
18 himself in, I think, what can be charitably described
19 as deviant sexual contact involving bondage,
20 sadomasochism, that sort of thing.

21 I do want to make it clear that we are
22 not offering any evidence for the purpose of trying to
23 bias the Court or any person against this Defendant
24 because he may or may not be gay. We are only
25 attempting to give the Court a full picture of this

1 Defendant's sexual proclivities, the extent to which
2 he will go to indulge in those sexual proclivities so
3 the Court can make, I think, a just evaluation of
4 basically redeemability, danger to the community and
5 to ultimately provide a just sentence.

6 We are also going to call a
7 representative from the Sam Houston Area Council of
8 the Boy Scouts of America to simply basically advise
9 the Court of the Defendant's involvement over the
10 number of years while he was downloading child
11 pornography with the Boy Scouts High Adventure Crew,
12 which is a Boy Scouts of America program.

13 And then, finally, we've got a police
14 officer from 2004, which is presently a police
15 officer, a deputy sheriff for the Grimes County
16 Sheriff Department who arrested the Defendant back in
17 2004 for evading arrest with a vehicle. He was put in
18 the Grimes County Jail until time of trial for that.
19 He received probation -- felony probation as well.

20 THE COURT: Yes, sir.

21 **OPENING STATEMENT**

22 MR. JAMES: Judge, I appreciate
23 Mr. Phelps wanting to give you a full picture of Gregg
24 Baird. I suspect it will not be as full and well
25 rounded as you need to hear. I think you will have to

1 hear from the Defense and a number of witnesses about
2 a kind and warm-hearted Gregg Baird, excellent worker,
3 a man who has never -- despite what they say about the
4 Boy Scouts, has never, never, never had any improper
5 conduct with a child.

6 And you're going to hear from the Boy
7 Scouts -- former Boy Scouts who will tell you that he
8 has never committed any act that would even make them
9 uncomfortable.

10 And Judge, I think that once you've
11 heard that real well-rounded Gregg Baird, and you hear
12 what happened to Gregg Baird when he was 12 years old,
13 I think, Judge, that will give you a well-rounded
14 picture of Gregg Baird, not the photos that Mr. Phelps
15 intends to offer.

16 THE COURT: All right. Call your first
17 witness.

18 MR. PHELPS: We call Nathan McCune.

19 MR. JAMES: Judge, may I borrow a pen?

20 THE COURT: Yes, make sure that one
21 really works. There's a couple in there that don't.

22 NATHAN MCCUNE,
23 having been first duly sworn, testified as follows:

24 MR. PHELPS: Judge, may I proceed, Your
25 Honor?

1 THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MR. PHELPS:

4 Q. Would you state your name for the court
5 reporter?

6 A. Nathan McCune, M-C-C-U-N-E.

7 MR. JAMES: Judge, at this time, we'd
8 ask that the Rule be invoked.

9 THE COURT: All right. The Rule has
10 been invoked. If we have any witnesses in the
11 courtroom, please rise and identify yourself for the
12 record.

13 Would you identify yourself, please,
14 sir?

15 MR. SHEETS: I'm sorry, Judge?

16 THE COURT: Just give us your name.

17 MR. SHEETS: My name is Michael Sheets.

18 THE COURT: All right. Do we have --
19 remain with us just for a second.

20 And your name, ma'am, on my left?

21 MS. DOROTHY BAIRD: Dorothy Baird.

22 THE COURT: All right.

23 MS. KAREN BAIRD: Karen Baird, Gregg's
24 mom.

25 MR. JOHN BAIRD: I'm his dad, John

1 Baird.

2 THE COURT: All right. The Rule has
3 been invoked. That means that all witnesses must
4 remain in the hallway. The purpose of that is to keep
5 you from finding out what other witnesses are saying
6 in the courtroom until you testify. Please do not try
7 to talk to anybody about the case or gain any
8 knowledge about what the witnesses are testifying to.
9 You may talk to the lawyers, however.

10 At this time, please retire to the
11 hallway and await your turn to testify.

12 (Witnesses comply)

13 MR. PHELPS: There's Mr. Russ.

14 THE COURT: Mr. Russ, are you a
15 witness?

16 MR. RUSS: I was; but apparently, I'm
17 not now.

18 THE COURT: Okay.

19 Q. (By Mr. Phelps) Okay. Can you state your
20 name for the record?

21 A. Nathan, N-A-T-H-A-N, McCune, M-C-C-U-N-E.

22 Q. How are you employed?

23 A. As an investigator and advisor for the
24 Brazos County District Attorney's office.

25 Q. And the Judge may already be familiar with

1 your duties; but just so the record is clear, could
2 you just give the Judge just a brief rundown of your
3 law enforcement career?

4 A. Yes, sir, I went to work for the College
5 Station Police Department in August of 1998 where I
6 stayed employed both as a patrol officer and then as a
7 detective until October 200- --

8 MR. JAMES: We'll stipulate to that,
9 Judge.

10 MR. PHELPS: Okay.

11 Q. (By Mr. Phelps) So that it is on the record,
12 have you received training in computer forensic
13 examination?

14 A. Yes, sir, beginning in February 2005, I
15 completed about 165 hours of training in that field
16 including conducting about 82 solo examinations of
17 computers and have observed many others.

18 Q. Okay. Have you been involved in the
19 investigation of child pornography -- possession of
20 child pornography cases?

21 A. Yes, sir, I have on several occasions.

22 Q. Okay. Did you do computer forensic
23 examination work on computers and hard drives and
24 other peripheral devices that were taken from the home
25 of Gregg Baird pursuant to the search warrants?

1 A. Yes, sir, I did.

2 Q. Let's start, first of all, if you would by
3 telling the Court exactly what it was that you
4 examined. I'm not talking about what you found in the
5 computer, but what did you examine?

6 A. In -- on May the 27th, 2009, I had
7 approximately 17 devices delivered -- computer
8 devices, electronic storage devices, delivered to me
9 here at the courthouse by University Police
10 Department.

11 And do you want me to go through what
12 each one of them was?

13 Q. Yeah, just -- just --

14 MR. JAMES: Just -- Judge, just for the
15 record, I'm always a little scared of waiving
16 something. We again renew our objections on the
17 grounds previously stated concerning the search
18 warrants of this case the Court previously ruled on.

19 THE COURT: It will be overruled. I'll
20 give you a running objection to all fruits of the
21 search.

22 MR. JAMES: Thank you.

23 Q. (By Mr. Phelps) Yeah, if you could, just
24 tell the Judge what devices you look through; and then
25 we'll talk about that.

1 A. Go through them one by one?

2 Q. Yes, sir.

3 A. The first device I examined was the Fuji
4 Film XD Picture Card, which is -- in simple terms,
5 it's a card that you put in -- you can either put it
6 into a camera or a computer that stores any kind of
7 electronic media whether it be songs, pictures,
8 anything like that.

9 Q. Okay. And the second device?

10 A. Sony Memory Stick Pro, also a card that you
11 can put in a computer or other device, camera or
12 anything like that, that would store any kind of
13 media.

14 Q. And the next device?

15 A. And a SanDisk Memory Stick Pro, similar to
16 the Sony, just capable of holding electronic media.

17 Q. And the next one?

18 A. It's a Sony Memory Stick Pro. Again, same
19 circumstances, capable of containing electronic media.

20 Q. And the next one?

21 A. Sony Memory Stick, same situation, a card
22 capable of containing electronic media.

23 Q. Okay. And the next one?

24 A. A Lexar SD card, also a card capable of
25 containing electronic media.

1 Q. And the next device?

2 A. Another Sony Memory Stick Pro, a device
3 capable of containing electronic media.

4 Q. And then the next device?

5 A. Super Flash USB 2.0 Drive. This is more
6 like you've got a flash drive or a USB drive, thumb
7 drive. It's capable of containing electronic media as
8 well.

9 Q. And the next device, is that also the same
10 exact type of device?

11 A. Same exact type drive, yes, sir.

12 Q. And the next device?

13 A. The next device was a Maxtor One Touch
14 External Hard Drive.

15 Q. What's an external hard drive?

16 A. It's essentially the same thing as I've
17 already talked about except it -- rather than being in
18 a card that goes in a camera or something like that,
19 it's just a large hard drive that you can store any
20 kind of media from a computer.

21 Q. Okay. And the next device?

22 A. The next device was actually a computer, a
23 Dell XPS 410 Desktop Computer.

24 Q. Is that the desktop computer that was
25 recovered from Mr. Baird's bedroom?

1 A. I don't have it in the report; but yes, sir,
2 I do believe that was.

3 Q. Okay. And any other devices?

4 A. Yes, sir, the next device was a Dell
5 Optiplex GX 520. This was the computer that Mr. Baird
6 used at his work at the credit unit.

7 Q. Okay. Was it a laptop or a desktop?

8 A. It was a desktop.

9 Q. Okay. And then the next device?

10 A. The next one was a Western Digital Internal
11 Hard Drive. It was a hard drive built to go inside of
12 a computer, but this was just separate, you know.

13 Q. Did it appear it had been removed from a
14 hard drive -- from the computer?

15 A. Yes, sir, it looked like at one point it had
16 served as the main hard drive for his computer.

17 Q. Okay. And the next device?

18 A. Western Digital External Hard Drive, similar
19 as the other external hard drive. It's a large
20 storage space for electronic media.

21 Q. And was the next device also another Western
22 Digital External Hard Drive?

23 A. Yes, sir, it was.

24 Q. And the next device?

25 A. Seagate Barracuda Internal Hard Drive, again

1 another hard drive that was designed to go inside a
2 computer or inside the shell of an external hard
3 drive; but yes, it looks like an internal hard drive.

4 Q. Okay. And finally, the last device you
5 looked at?

6 A. Device Number 17 was a Sony Vaio Notebook
7 Computer.

8 Q. Okay. Now, I just want you to go through,
9 if you would, and explain to the Judge what was the
10 purpose of examining these devices.

11 A. At the time the devices were turned over to
12 me, it was believed that they were -- they were
13 believed to contain child pornography.

14 Q. Okay. And when you go about doing
15 examinations for child pornography on computers and
16 these peripheral devices, the hard drives and that
17 sort of thing, how do you do it?

18 A. We use a commercially-available software.
19 It's called Encase.

20 Q. Uh-huh.

21 A. It's generally the industry standard in law
22 enforcement, or one of the two industry standards in
23 law enforcement. It's a program that we use to make
24 an exact bit by bit copy of whatever media we're
25 examining and then examine that media without altering

1 the original device.

2 Q. Okay. So did you, in fact, conduct this
3 examination of all these devices that you've told the
4 Judge about looking for potential child pornography?

5 A. Yes, sir. The software --

6 Q. Go ahead.

7 A. The software also allows you to connect it
8 to the computer that I use to look at it without
9 changing anything on the device and actually preview
10 it rather than copying everything you view. So the
11 devices you look at that don't have any evidence on
12 them, per se, you don't have to copy those. There's
13 no need. It's unnecessary.

14 Q. Okay. Now, over the course of your
15 investigation -- well, first of all, how long a period
16 of time did you conduct this examination?

17 A. I received -- like I said, I received these
18 devices on May 27th of '09. Obviously, I have other
19 duties as well; but probably over the course of six to
20 eight months, I worked on this periodically.

21 Q. Okay. How many man-hours do you think you
22 put into looking into this information?

23 A. A rough estimate, about 120.

24 Q. And of those 17 devices listed for the
25 Judge, did you find child pornography, which is

1 suspected child pornography, on any of those devices?

2 A. On five of the devices, yes, sir.

3 Q. Well, I'd like to go through kind of each
4 one. Let's start with the first device that you found
5 there. Would you suspect child pornography?

6 A. The first one that had the child porn on it?

7 Q. Yes, sir. Well, we can just start with --
8 let's start with the computer -- the Dell computer
9 that you talked about.

10 A. Okay. The Dell XPS 410 computer? Yes, sir,
11 that did contain files that I believe to be child
12 pornography.

13 Q. And do you know how many?

14 A. I've got a chart here. Let me refer to
15 that.

16 Q. Tell you what. Let me do this: You said
17 that you found what you suspect to be child
18 pornography on how many devices?

19 A. Five devices.

20 Q. And did you reduce your findings to a
21 summary chart for the Court?

22 A. Yes, sir, I did.

23 Q. And also some kind of a, I guess,
24 diagramming effort, give a diagram to show me --

25 A. Yes, sir.

1 MR. PHELPS: May I approach, Your
2 Honor?

3 THE COURT: Yes, sir.

4 Q. (By Mr. Phelps) -- from which the images
5 came?

6 A. Yes, sir.

7 Q. And is that State's Exhibit Number 3?

8 A. Yes, sir, it is.

9 MR. PHELPS: Okay. At this time, we'll
10 offer State's Exhibit Number 3.

11 (State's Exhibit Number 3 offered.)

12 MR. JAMES: Judge, other than the
13 objections previously lodged, which we are still
14 maintaining, obviously, that we urged earlier in the
15 pretrial hearing, we would have an objection as it
16 relates to the mention of adult male bondage and
17 homosexual conduct that is not prohibited; and we
18 would mention that in there.

19 We'll have further objections, too, if
20 the State decides to post those images and introduce
21 them. Even the mention of those, Judge, we would
22 object to under the Lawrence v. Texas and the Due
23 Process clause.

24 THE COURT: Response?

25 MR. PHELPS: Your Honor, first of all,

1 it's not the rule that it has to be prohibited conduct
2 for it to be relevant to a punishment hearing. Again,
3 the State is offering this evidence to give the Court
4 a complete and full picture of this Defendant's sexual
5 propensities.

6 THE COURT: Overrule the objection.

7 MR. JAMES: May I have a running
8 objection, Judge?

9 THE COURT: Yes, you may.

10 Q. (By Mr. Phelps) So the chart that's just
11 been admitted --

12 THE COURT: State's 3 is admitted.

13 (State's Exhibit Number 3 admitted.)

14 MR. PHELPS: Sir?

15 THE COURT: State's 3 is admitted.

16 MR. PHELPS: Oh, thank you, Judge. I
17 apologize.

18 Q. (By Mr. Phelps) -- will you explain that to
19 the Court? What exactly is this chart?

20 A. Yes, sir. If you'll look at the chart on
21 the left side, the device's name shows which device
22 contained the suspected child pornography. The next
23 column contains the size of the storage space taken up
24 on the disk -- on the device; and then the next column
25 is the number of image files on each device and the

1 number of video files on each device. And I should
2 note, the adult bondage of which Mr. James spoke of is
3 not included in these.

4 Q. Okay.

5 A. This is just the child pornography.

6 Q. Okay. Now, as you examined all of these
7 five devices containing this suspected child
8 pornography, did you actually go through and flip
9 through the images, the thumbnails of these images?

10 A. Yes, sir.

11 Q. Can you tell the Court whether the images
12 that are represented on State's Exhibit Number 3
13 represent child pornography?

14 A. The image file column that --

15 Q. Yes.

16 A. Yes, sir, they do.

17 Q. Well, what the Court is looking at is the
18 total number of some 62,000 images.

19 A. The file number on this -- on this chart is
20 the suspected child pornography, yes, sir.

21 Q. Okay. And you've got actual experience in
22 looking at these?

23 A. Yes, sir.

24 Q. Because of your work with child pornography?

25 A. Yes, sir.

1 Q. And what you have tendered to the Court in
2 State's Exhibit Number 3, is that representative of
3 the child pornography that you found over the course
4 of the examination of these five devices?

5 A. Yes, sir.

6 Q. Now, with respect to the entirety of the
7 images, did you download those onto a portable hard
8 drive?

9 A. Yes, I put all the evidence files onto one
10 hard drive.

11 Q. And is that State's Exhibit Number 32?

12 A. Yes, sir, it is.

13 Q. And what is State's Exhibit Number 32?

14 A. State's Exhibit Number 32 is -- is an
15 external hard drive like we talked about earlier.
16 It's one that was in the DA's possession. It was
17 brand new, and I opened it, and I copied everything in
18 there.

19 Q. Okay. And what is contained on State's
20 Exhibit Number 32?

21 A. It is all of these files that are listed in
22 the chart as well as any file list or any exports that
23 I did as part of my work to kind of categorize
24 everything.

25 Q. And in terms of gigs, how many gigs of child

1 pornography is on State's Exhibit Number 32?

2 A. Well, as reflected in the chart, 211.5
3 gigabytes of child pornography and then probably an
4 additional -- there's additional files that are
5 contained in my work --

6 Q. Okay.

7 A. -- product of my work.

8 MR. PHELPS: All right. At this time,
9 State will offer State's Exhibit 32.

10 (State's Exhibit Number 32 offered.)

11 MR. JAMES: Same objection.

12 THE COURT: Overruled, and 32 is
13 admitted.

14 (State's Exhibit Number 32 admitted.)

15 MR. JAMES: If it contains adult sexual
16 conduct, our objection would also be the Fourteenth
17 Amendment, Due Process objection and under -- as well
18 as the search issue.

19 THE COURT: Thank you. And that will
20 be overruled.

21 Q. (By Mr. Phelps) Investigator McCune, you've
22 testified briefly that you have been involved in a
23 number of child pornography investigations while at
24 the District Attorney's Office as well as the College
25 Station Police Department.

1 Have you ever seen this number of
2 images?

3 A. That number, no, sir.

4 Q. In terms of your examination of all these
5 images to the extent that you were able to look
6 through these thumbnails, have you ever seen any child
7 pornography more graphic than what's represented on
8 State's Exhibit Number 32?

9 A. No, sir, I have not.

10 Q. At my request, did you compile summary lists
11 of the file names of all of these images?

12 A. Yes, sir.

13 Q. Let's start with State's Exhibit Number 34.
14 Will you tell the Court what this is?

15 A. This is a list of file names. Basically,
16 what I did was create an Excel spreadsheet with all
17 the file names of the child pornography files. This
18 is a list of just stuff on the Maxtor One Touch
19 External Hard Drive.

20 Q. And the file names that are listed in this
21 exhibit and several others we'll look at, explain to
22 the Court, if you will, how those file names are
23 attached to these, affixed to the files.

24 A. Can you explain?

25 Q. Well, I mean, are they -- each one of these

1 things labeled by, for instance, the Defendant in this
2 case or downloaded in those files, do the names come
3 with them?

4 A. Generally, the file name came with them. I
5 didn't see any evidence that all these files were
6 being individually named.

7 Q. Okay. And from your examination in terms of
8 how these files were downloaded, let me ask you just a
9 couple of questions. First of all, is there any
10 evidence that these files, some 62,000 that you
11 testified to, were accidentally downloaded onto the
12 Defendant's computer?

13 A. No, sir.

14 Q. Or on any of his hard drives or peripherals?

15 A. No, sir.

16 Q. Were any -- what does it take to download
17 one of these images or a number of these images?

18 A. Well, it takes an intentional action on the
19 part of the user of the computer to go to a site, a
20 website of whatever type, a sharing location to
21 actively go out and point and say: Yeah, I want to
22 take this file.

23 Q. Okay. And active downloading, actually a
24 conscious, intentional act of getting something from
25 the Internet, I guess, getting it onto the hard drive

1 of your computer?

2 A. Correct. The fact that this stuff was on
3 the device was just neither accidental nor incidental.
4 I mean, it was an independent action taken by the user
5 of the computer.

6 Q. Okay. And from your examination of all of
7 these devices, did it appear that these were
8 downloaded one at a time, or is it possible to
9 download these in batches?

10 A. They're generally batched download. The
11 user is able to download what's called an RAR or a ZIP
12 file, and those files contain -- can contain two or
13 three files to hundreds of pictures in one file. It's
14 basically container files is what it is.

15 Q. Okay. Were the files that we're talking
16 about where they downloaded, at least from your
17 examination, in batches or in --

18 A. Yes, sir.

19 Q. -- multiple --

20 A. What I found looked like they had been in
21 batches.

22 Q. And you mentioned file-sharing sites. Will
23 you explain that to the Judge?

24 A. Yes, sir. File-sharing sites are online
25 websites that people can go to. There are legitimate

1 sites. Even some of the sites that were visited are
2 legitimate sites. Basically, they're places where
3 people can post their media, their pictures for others
4 to go and view.

5 But the issue with those sites are also
6 people can post, you know, illegal contact and for
7 others to go download as well.

8 Q. Okay. Is it common?

9 A. It's kind of common, yes, sir.

10 Q. And did you, from your examination,
11 determine as to whether the files on the Defendant's
12 computer -- at least some of them -- were downloaded
13 from those kind of file-sharing sites?

14 A. Yes, sir, the vast majority, I would say
15 were.

16 Q. And on those file-sharing sites, can
17 certain -- are certain of those files password
18 protected?

19 A. Yes, sir, in my research for this case in
20 going to some of the exact sites that were visited
21 with his computer, I was able to go to the websites
22 and found that there are these -- these libraries with
23 some of them being password protected --

24 Q. Okay.

25 A. -- where there are containers of folders.

1 Q. Are there libraries of these kind of images
2 that are not password protected?

3 A. There are, yes, sir.

4 Q. So getting back to State's Exhibit Number 4,
5 which is a large -- probably about ten-inch deep file,
6 explain to the Court on each one of these pages about
7 how many file names are we seeing?

8 A. They may be different on each set, but
9 there's roughly 20 to 25 file names on each page.

10 Q. Okay.

11 A. And then it takes up that many pages.

12 Q. Okay. And this is State's Exhibit Number 4.
13 There's a date on these pages. What does that date
14 indicate?

15 A. I believe in the majority of those, the
16 dates show the date last accessed by the computer,
17 which could be -- unfortunately, that date is not
18 extremely useful because it could be the date the
19 last, you know, security scan was run. I mean, and
20 they'll all show the same date, basically.

21 Q. And that State's Exhibit Number 4, those
22 file names come from what device?

23 A. Those come from the Maxtor One Touch
24 External Hard Drive.

25 Q. This is State's Exhibit Number 5. Is this

1 the same kind of information that was contained in
2 State's Exhibit Number 4?

3 A. Same sort of information, yes, sir.

4 Q. In the same format?

5 A. Yes, sir.

6 Q. And where does that come from?

7 A. That comes from the Western Digital 1600
8 External Hard Drive.

9 Q. And then looking at State's Exhibit
10 Number 6, this is a much smaller file.

11 What is this?

12 A. That's from the Western Digital Internal
13 Hard Drive.

14 Q. Also containing file names?

15 A. Yes, sir.

16 Q. And State's Exhibit Number 7, same
17 questions?

18 A. Yes, sir, that's the Dell XPS 410 Desktop
19 Computer.

20 Q. Also containing file names?

21 A. Yes, sir.

22 Q. And all of these are about 20 to 25 per
23 page?

24 A. Roughly.

25 Q. And then, finally, State's Exhibit Number 8?

1 A. That's the Seagate Barracuda Internal Hard
2 Drive.

3 MR. PHELPS: At this time, Your Honor,
4 the State would offer State's 4, 5, 6, 7 and 8.

5 (State's Exhibit Numbers 4 through 8
6 offered.)

7 MR. JAMES: Same objection as
8 previously lodged.

9 THE COURT: Overruled.

10 That would be 6 through -- what was it?

11 MR. PHELPS: It's 4, 5, 6, 7 and 8.

12 THE COURT: All right. Exhibits 4
13 through 8 admitted into evidence.

14 (State's Exhibit Numbers 4 through 8
15 admitted.)

16 THE WITNESS: I just want to add, this
17 is not the list of all the files on the computer.
18 This is just the child pornography file names.

19 MR. PHELPS: Okay. Yeah, 20 to 25 per
20 page.

21 I'll put these up here.

22 THE COURT: All right. Yes, sir. You
23 want me to look at them now?

24 MR. PHELPS: I don't think it's
25 necessary.

1 Q. (By Mr. Phelps) Some of the file names, are
2 they just numbers?

3 A. Yes, sir, they're just random names on a lot
4 of the files.

5 Q. Are some of the file names pretty
6 descriptive?

7 A. Yes, sir, some of them can be.

8 Q. With respect to some of the file names, are
9 they descriptive such that somebody looking at the
10 file name could determine that they were, in fact,
11 files containing child pornography?

12 A. Yes, sir, they should know that they would
13 be -- contain children. They list ages and things.

14 Q. So some of the file names, they list ages?
15 Do they list sex acts?

16 A. Yes, sir.

17 Q. In the images that -- the 62,000 or so that
18 you testified to, are we talking about just pictures
19 of children just naked?

20 Are we talking about pictures of
21 children who are involved in sex acts?

22 A. Pictures of children involved in sex acts
23 with other children, pictures of children naked and
24 pictures of children involved in sex acts with adults,
25 also.

1 Q. Were you able to determine in your
2 examination about the time frame of how long these --
3 the earliest date of, at least from what you looked
4 at, where this sort of material was downloaded in the
5 Defendant's computer?

6 A. Yes, sir, the earliest date that I found any
7 of the child pornography on any of these drives was
8 March 2004.

9 Q. And what was the latest date?

10 A. May 6, '09.

11 Q. May 6th of 2009?

12 A. Yes, sir.

13 Q. Now, with respect to all of these images --
14 well, let me ask this first: Can you give the Judge
15 some sense of the organization, if any, of the file on
16 the Defendant's computer and these other peripheral
17 devices?

18 A. Most of -- like I explained earlier, a lot
19 of these files that you download, they come in
20 container-type folders; and you just download the
21 folder. You open up the folder, and you've got
22 hundreds of pictures within it. Most of the -- and
23 then in most of those container folders that were
24 downloaded, had been opened up; and the internal
25 contents had been organized throughout the different

1 drives.

2 Q. And did you observe or see any evidence of
3 attempts to kind of hide some of this material?

4 A. Yes, sir, there was some of these folders
5 that had been created in the vast majority of the
6 pornography hidden, were in places that you wouldn't
7 normally store media on a hard drive. They were
8 within -- either within program files or within --
9 under -- within folders that pertained to system files
10 and not just where users would store media.

11 Q. Yes. Is there any question in your mind
12 that the intent of that was to hide these files?

13 A. No, sir, that seems to be what it looks
14 like.

15 Q. Okay. And you're aware that the Defendant
16 was originally charged with 100 counts of child
17 pornography?

18 A. I am.

19 Q. And that, ultimately, he pled guilty to ten
20 of them and then admitted guilt in the other 90?

21 A. Yes, sir, I believe that's right.

22 Q. Okay. I want to show you State's
23 Exhibit Number 1 and State's Exhibit Number 2. What
24 does State's Exhibit Number 1 contain?

25 A. That is going to be the 100 counts he was

1 originally charged with.

2 Q. The 100 counts. Now, does that contain the
3 entirety of the video images as well as the still
4 images?

5 A. Yes, sir, it does.

6 Q. And State's Exhibit Number 2, can you tell
7 the Court what that is?

8 A. That is going to be a presentation that I
9 can put together that contains all the charged images
10 and the portions -- small portions of the child
11 videos.

12 Q. And does that contain all 100 of those
13 charged images?

14 A. Yes, sir, it does.

15 Q. And are the images that are contained, the
16 video images and the still images in State's
17 Exhibit Number 2 and State's Exhibit Number 1,
18 representative of the kinds of child pornography
19 contained throughout the Defendant's computer and
20 other peripherals?

21 A. Yes, they are.

22 MR. PHELPS: Your Honor, at this time,
23 we'll offer State's Exhibits 1 and 2.

24 (State's Exhibit Numbers 1 and 2 offered.)

25 MR. JAMES: Same objection previously

1 lodged, Judge.

2 THE COURT: All right.

3 MR. JAMES: If that's overruled, I
4 do --

5 THE COURT: Overruled.

6 MR. JAMES: Okay.

7 THE COURT: You looked like you wanted
8 to say something.

9 MR. JAMES: I do. I do. I just want
10 to make sure -- is there a way to identify the ten
11 images that are the subject of the --

12 MR. PHELPS: Yes.

13 MR. JAMES: -- pleas versus the 90 that
14 he's culpable for?

15 MR. PHELPS: The 12.45s, yes. There
16 are before each image -- for the Court's edification,
17 for each image, there is a kind of a title page --
18 black title page that has the State's
19 Exhibit whatever, and then -- or some information
20 about where it comes from and the cause number and the
21 count.

22 MR. JAMES: Okay. Will it
23 identify this is the -- let me --

24 MR. PHELPS: It will not say: This is
25 one of them he pled guilty --

1 MR. JAMES: Okay. I think we need -- I
2 think we need to be able -- I mean, I'm just
3 scrambling here looking at the counts.

4 MR. PHELPS: Well, yeah --

5 THE COURT: Just give me the counts,
6 and I'll know --

7 MR. JAMES: Yeah, let's look. Let's
8 just look at -- just for the record, if we can.

9 MR. PHELPS: Sure, that's fine. I
10 mean, obviously, they're all admissible for purposes
11 of punishment.

12 MR. JAMES: I'm not doubting the
13 admissibility.

14 THE COURT: Just for clarity of what
15 specifically --

16 MR. JAMES: Yes, if we can -- if we go
17 back and review because I don't know the counts.

18 MR. PHELPS: I don't either.

19 Why don't I go ahead and publish it?
20 May I go ahead and proceed?

21 THE COURT: Yes, sir.

22 My eyes aren't too good, so bring it up
23 close. Bring it up close.

24 MR. PHELPS: I brought it --

25 THE COURT: Thank you.

1 MR. JAMES: Okay. These are the 12.45
2 counts. Do you have -- these are 12 -- these are the
3 ones that are 12.45s?

4 THE COURT: I have no idea. It's
5 probably in another folder.

6 MR. JAMES: Okay. If I could get the
7 12.45s.

8 THE COURT: Is that something that we
9 can do during the course of the day?

10 MR. JAMES: I think so. I may have to
11 call him back.

12 THE COURT: Make sure I have it, if I
13 have any questions.

14 MR. JAMES: I may have to call him back
15 for some questions.

16 THE COURT: Okay.

17 MR. JAMES: I just want to make sure
18 the record is very clear. This is the 12.45 counts.

19 MR. PHELPS: Yeah, we can put together
20 a list of which one of the counts, and we'll look at
21 it.

22 MR. JAMES: Okay.

23 MR. PHELPS: I can probably do that
24 over lunch.

25 MR. JAMES: Yeah.

1 MR. PHELPS: And then we can just agree
2 to it and stipulate to it.

3 MR. JAMES: I will probably need to ask
4 him a couple of questions after lunch, if I may.

5 THE COURT: That would be fine.

6 Do you need this anymore?

7 MR. JAMES: No, Judge. With that
8 understanding, it doesn't go to the admissibility.

9 THE COURT: I understand.

10 Yeah, I can see it.

11 MR. PHELPS: Tell us where you want it.

12 THE COURT: Bring it up as close as you
13 can.

14 That's good.

15 MR. PHELPS: Permission to post it to
16 the Court.

17 THE COURT: Yes, sir. Any objection?

18 MR. JAMES: Yes, same objection. If I
19 should slip at some point and say "no" or something
20 like that, we are always reiterating our objection to
21 these --

22 THE COURT: All right.

23 MR. JAMES: -- under the search issue.

24 THE COURT: All right. I understand.
25 That will be overruled.

1 (Video exhibit published.)

2 Q. (By Mr. Phelps) Investigator McCune, during
3 your investigation, were you able to determine whether
4 the Defendant had bookmarked or marked as favorites
5 any particular files?

6 A. Websites, yes, sir. He had bookmarked
7 websites.

8 Q. Would you explain to the Court what it means
9 to bookmark or place in your favorites folder a
10 particular website?

11 A. Sure. Whichever Internet browser you choose
12 to use -- here at the County, for instance, we use
13 Mozilla Firefox as our Internet browser. You have the
14 ability to bookmark your favorite sites that you go to
15 daily, which is news sites or whatever so that you can
16 return to them quickly by just clicking in your
17 bookmarks folder. And you're also able to do that
18 with Internet Explorer and other Internet browsers as
19 well.

20 Q. And were you able to determine whether the
21 Defendant had bookmarked a number of sites related to
22 child pornography?

23 A. Yes, sir, he had.

24 Q. And did you compile a listing of those
25 bookmarked files?

1 A. The bookmarks --

2 Q. Each of those bookmarks?

3 A. -- for each Internet browser type for two
4 devices that actually contained those.

5 Q. Let me show you State's Exhibit Number 9.
6 What is that?

7 A. This is a list of the Mozilla bookmarks for
8 the Dell XPS 410 Desktop Computer.

9 Q. Now, for each bookmark, if -- let's say I
10 wanted to bookmark a site for camera equipment.

11 A. Yes, sir.

12 Q. How would I go about doing it? Would that
13 depend on the computer or the browsers?

14 A. It would probably depend on the browser
15 type; but, generally, you just go up to, like, the
16 Tools menu once you're in the Internet window, and you
17 click on the option to bookmark this page.

18 Q. Okay. So is it an actual conscious,
19 intentional act to bookmark a particular page?

20 A. Yes, sir. You do have the ability a lot of
21 times to transfer -- when you get a new computer to
22 transfer your old bookmarks into a new Internet
23 browser type. But, yes, sir, at one point, they would
24 have had to have been intentionally marked.

25 Q. Okay. And as distinguishing -- or

1 distinguished between bookmarks and simply Internet
2 history, is this just an Internet history; or is this
3 actually --

4 A. This is just bookmarks. This does not show
5 the -- it just shows where his favorites sites were.

6 Q. Okay. And State's Exhibit Number 10?

7 A. The Dell XPS 410 Mozilla 3 bookmarks.

8 Q. And what is Mozilla 3 versus Mozilla?

9 A. In each case of, I guess, different Internet
10 browsers, it may just be a separate install, either an
11 earlier or later install of the Mozilla.

12 Q. Okay. And State's Exhibit Number 11?

13 A. That's the Dell XPS 410 Internet Explorer
14 bookmarks.

15 Q. And then -- so these are all -- again,
16 State's Exhibits 9, 10 and 11, are they all from the
17 actual desktop computer that was found in the
18 Defendant's bedroom?

19 A. Yes, sir.

20 Q. State's Exhibit Number 12?

21 A. That's the Western Digital Internal Hard
22 Drive Mozilla bookmarks.

23 Q. Okay.

24 A. And that Western Digital Hard Drive, as I
25 testified earlier, was an internal hard drive that

1 looked like it had been used in a computer from an
2 earlier time.

3 Q. Okay. And then State's Exhibit 13?

4 A. Western Digital Internal Hard Drive Internet
5 Explorer bookmarks.

6 Q. Okay. So 12 is the Western Digital Internal
7 Hard Drive for Mozilla bookmarks, and 13 is the
8 Western Digital Internal Hard Drive --

9 A. Yes, sir.

10 Q. -- for the Internet Explorer?

11 A. Yes, sir.

12 MR. PHELPS: All right. At this time,
13 we'd offer State's Exhibits 9, 10, 11, 12 and 13.

14 (State's Exhibit Numbers 9 through 13
15 offered.)

16 MR. JAMES: Same objections previously
17 lodged, Your Honor.

18 THE COURT: Overruled. Those will be
19 admitted, 9 through 13.

20 (State's Exhibit Numbers 9 through 13
21 admitted.)

22 Q. (By Mr. Phelps) And in each of these, is it
23 a spreadsheet?

24 A. Yes, sir. Through Encase, you're able to
25 create exports into different formats; and in this

1 one, I did an Excel spreadsheet.

2 Q. And just so the Court knows when the Court
3 looks at these, it has a file for names?

4 A. Right, that name is the name of the actual
5 file contained in the computer. It is not necessarily
6 the name that was entered by the user. No matter what
7 website -- most Internet browsers, if you bookmark a
8 site, you're able to manually name the bookmark to
9 whatever you want so you recognize it. This name on
10 here that is found on the spreadsheets is what the
11 computer shows.

12 Q. Okay.

13 A. That's not what was typed.

14 Q. Okay. And that's why it bookmarks html or ^
15 bskpf?

16 A. That's how the computer retrieved it.

17 Q. And there's a column for "Created"?

18 A. Right, the date that the bookmark was
19 created.

20 Q. And then profile name, what is the profile
21 name?

22 A. Most Windows-based computer systems allow
23 different -- allow more than one user on a computer.
24 Such as if a couple is living together, one can have a
25 profile. The other can have a profile. And so when

1 you go into your profile with all your favorites, all
2 your settings and everything else; and the other
3 person goes into theirs, they have all their settings
4 preset.

5 The profile name on here is which
6 profile is the person, you know, that did that
7 bookmark file.

8 Q. Now, was there another profile on this
9 computer for the Defendant's roommate?

10 A. No, sir, I don't believe there was.

11 Q. Okay. And this has -- one of the profile
12 names is Gregg. In some places, it says Gregg Baird.

13 A. Correct. And the reason that is on this
14 computer, it appeared that he had backed up an old
15 copy of the Windows and maybe -- it appears his
16 previous user profile name on that older copy of
17 Windows was Gregg Baird; and then on the newer one, he
18 was just Gregg.

19 Q. Okay. And then the url name, is that the
20 actual name of the site bookmarked?

21 A. Right. That's the -- if you click on the
22 bookmark, that's where it would take you.

23 Q. And then the browser type is just whether it
24 is Mozilla or Internet Explorer?

25 A. Yes, sir, sure.

1 Q. Just had a few questions. Did you excerpt
2 some of those bookmark sites on to your report?

3 A. Yes, sir, I just wanted to give a sample of
4 the different type of bookmarks he had.

5 Q. So what is here is already in what was just
6 admitted into evidence?

7 A. Yes, sir.

8 Q. Okay. I just had a couple of questions for
9 you about a couple of these. Do a number of these --
10 at least the ones that you listed -- mention boys?

11 A. Yes, sir.

12 Q. There's one that's like boyslink.url,
13 puppyboys.co.uk.url?

14 A. Uh-huh.

15 Q. Is that UK -- is that -- does that indicate
16 that it's a site located outside of the country?

17 A. Yes, sir. I believe that's in the United
18 Kingdom.

19 Q. There is -- there are a number related to
20 bondage and that sort of thing?

21 A. Yes.

22 Q. There's one that's schoolboysonly,
23 slayedlads; and then there's a -- one that says
24 imgsrc.ru.

25 A. Yes, sir.

1 Q. Is that preventscout?

2 A. Yes, sir.

3 Q. And searchboy?

4 A. Yes, sir.

5 Q. What is that? What is that imgsrc?

6 A. Imgsrc, in doing the research for that -- in
7 researching these specific links, I went to that site;
8 and it is a file-sharing site, like we spoke of
9 earlier, where you can post libraries of photos and
10 other media.

11 Q. One of the sites that he bookmarked was
12 perverted-justice.com?

13 A. Yes, sir.

14 Q. It says: Exposing wannabe perverts on the
15 net.url?

16 A. Yes, sir.

17 Q. What is perverted-justice.com?

18 A. I'll have to admit, I did not go to that
19 one. I have a general understanding of what it is,
20 but I didn't research that site.

21 Q. Okay. You understand perverted-justice to
22 be an organization that is exposing -- basically, it
23 puts people online to try to entrap --

24 MR. JAMES: Objection to -- A, to
25 leading, Judge.

1 THE COURT: Sustained.

2 MR. JAMES: Thank you.

3 Q. (By Mr. Phelps) What is your under --

4 MR. JAMES: And Judge, his
5 understanding would come from hearsay. If he went to
6 it, I wouldn't have an objection other than those
7 previously lodged.

8 MR. PHELPS: Well, at this point, we
9 can stipulate as to his qualifications as to the
10 extent that he can claim that he has an understanding
11 of what that website is and what that organization is.
12 It certainly is within the realm of his expertize.

13 MR. JAMES: Judge --

14 MR. PHELPS: I don't think I need -- I
15 mean, it's not that I asked whether he visited. It's
16 what he knows about that website.

17 THE COURT: Ask him a couple more
18 questions about it.

19 Q. (By Mr. Phelps) Do you have information in
20 the course of your duties as a computer forensic
21 technician about what perverted-justice.com is?

22 A. I have a general understanding of what it
23 is. I can say, in fact, on the link itself that the
24 tagline for it says: "Exposing wannabe perverts on
25 the Net." So that's what it says.

1 Q. And this is actually a site that he visited
2 and bookmarked?

3 A. Yes, sir.

4 Q. Now, during the course of your examination,
5 did you recover a number of photographs of the
6 Defendant in sexual -- for lack of a better term --
7 bondage, sadomasochistic poses?

8 MR. JAMES: Judge, may I take him on
9 voir dire very briefly? I have an objection to lodge.

10 THE COURT: All right. Go ahead.

11 VOIR DIRE EXAMINATION

12 BY MR. JAMES:

13 Q. All the photos that you saw that Mr. Phelps
14 has represented, there were no children involved in
15 any of those?

16 A. In reference to the last question he asked?

17 Q. Yes.

18 A. No, sir, no children.

19 MR. JAMES: Judge, again, we would
20 object to that under the Fourteenth Amendment, under
21 Lawrence v. Texas, that it's Constitutionally
22 protected. We would object to that.

23 THE COURT: What has the Lawrence v.
24 Texas case told us?

25 MR. JAMES: That was -- Judge, I've got

1 a copy of it here. Essentially, it says that sexual
2 activity between consenting adults is Constitutionally
3 protected.

4 MR. PHELPS: That's the homosexual --

5 MR. JAMES: Yeah, yeah.

6 MR. PHELPS: That case is the case that
7 went up to the Supreme Court out of Texas. I believe
8 it just said that our homosexual conduct penal statute
9 was unconstitutional.

10 MR. JAMES: It went further than that,
11 Judge; and if the Court would look on Page 5 of 28.

12 THE COURT: Okay.

13 MR. JAMES: It says under 26 -- 24.75,
14 Bower's rationale does not withstand careful analysis.
15 In his dissenting opinion in the Bowers -- in Bowers,
16 Judge Stevens concluded that the fact that a State's
17 governing majority has traditionally viewed a
18 particular practice as immoral, is not a sufficient
19 reason for upholding it -- upholding a law prohibiting
20 the practice; and (2), individual decisions concerning
21 the intimacies of physical relationships, even when
22 not intended to produce offspring, are a form of
23 liberty protected by Due Process.

24 Certainly, we're not making any claim
25 that this applied to child pornography or anything

1 like that, Judge; but it does apply to things that
2 occurred between consenting adults, even if we do not
3 approve of those things. Otherwise, we get into a
4 situation where, you know, a woman's abortion may be
5 considered bad conduct -- would be by some people, but
6 could that be admitted into punishment? Being a
7 nonbeliever even. Some people would consider all
8 sorts of conduct as being bad conduct. There's got to
9 be something that governs that, and that's what we
10 object to on some of this Due Process, Your Honor.

11 THE COURT: All right. Overruled.

12 DIRECT EXAMINATION (CONTINUED)

13 BY MR. PHELPS:

14 Q. Investigator McCune?

15 MR. JAMES: May I have a running
16 objection?

17 THE COURT: A running objection to the
18 adult porn?

19 MR. JAMES: Yes, sir.

20 THE COURT: I think so. Yes, you'll
21 have that.

22 MR. JAMES: Okay. Thank you.

23 Q. (By Mr. Phelps) In your examination, did you
24 discover a number of -- quite of few photographs of
25 the Defendant engaged in sadomasochistic behavior with

1 other adults?

2 A. Yes, sir.

3 Q. As well as on his own? Some don't have
4 other adults in it?

5 A. Sure, it's just pictures of the Defendant.

6 Q. Did you also find other child porn on the
7 Defendant's computer that showed children in bondage?

8 A. Yes, sir.

9 Q. And in sadomasochistic positions?

10 A. Yes, sir.

11 Q. Let me show you State's Exhibit Number 14.
12 Is this exhibit a collection of those photographs that
13 depict the Defendant in those sexual situations?

14 A. Yes, sir.

15 Q. And State's Exhibit Number 15, does that
16 show contrasting photographs of the Defendant in
17 sadomasochistic poses with some of the photographs
18 taken off the Defendant's computer of children in
19 similar poses?

20 A. Yes, sir, there's side-by-side comparisons
21 of the children in bondage situations and then the
22 Defendant in those -- or the Defendant and other
23 individuals in the same situations.

24 MR. PHELPS: Your Honor, I would offer
25 State's Exhibit Numbers 14 and 15.

1 (State's Exhibit Numbers 14 and 15 offered.)

2 MR. JAMES: Same objection as
3 previously raised.

4 THE COURT: Overruled. That's 14 and
5 15, did you say?

6 MR. PHELPS: Yes, sir. State's 14 is
7 the pictures of the Defendant; 15 are the contrasting
8 photographs.

9 THE COURT: Those are admitted.

10 (State's Exhibit Numbers 14 and 15
11 admitted.)

12 Q. (By Mr. Phelps) With respect to State's
13 Exhibit Number 15, do those -- well, let me ask it
14 this way: Were there a number of photographs found in
15 the Defendant's computer depicting children in those
16 sadomasochistic poses?

17 A. Yes, sir.

18 Q. Are these photographs in State's Exhibit
19 Number 15, does that constitute all of them or just a
20 representative sample.

21 A. Just a sample.

22 Q. And did you find on the Defendant's computer
23 any files that appear to be related to Scouting?

24 A. Yes, sir.

25 Q. Did we also present those files as State's

1 Exhibit Number 17?

2 A. Yes, sir, the ones that were pornographic.
3 There were Scouting pictures related to the actual Boy
4 Scouts troop, I guess -- actual Boy Scout troop.

5 Q. The Defendant's Boy Scout activities?

6 A. Right, and then there's the pornographic
7 scouting.

8 Q. Now, did you find any photographs that you
9 could see in which the Defendant himself had taken any
10 photographs of actual Boy Scouts that he was involved
11 with?

12 A. He took pictures of Boy Scouts, but not
13 sexual, no.

14 Q. Okay. And these photographs that are
15 contained in State's Exhibit Number 17, are these
16 photographs downloaded off the Internet that just had
17 to do with Scouting?

18 A. Yes, sir.

19 Q. And are they photographs that depict Scouts
20 or, I guess, young men in camping situations, naked
21 and engaging in some sexual conduct?

22 A. Right, I'd say they're involved in Scouting
23 because the name itself says "Scouts." I don't know
24 those to be Scout activities, other than they are
25 camping.

1 Q. Okay. One is Maxtor One Touch/Program
2 Files/TEMP/scouts, and the other one is Maxtor One
3 Touch/Program Files/v/v1/scouts/campleteo.

4 A. Yes.

5 MR. PHELPS: All right. At this time,
6 we would offer State's Exhibit Number 17.

7 (State's Exhibit Number 17 offered.)

8 MR. JAMES: Same objection as
9 previously raised.

10 THE COURT: Overruled. Exhibit 17 is
11 admitted.

12 (State's Exhibit Number 17 admitted.)

13 MR. PHELPS: At this time, we'll offer
14 State's Exhibit 28. This was a DVD that was found in
15 the Defendant's bedroom. I think pursuant to our
16 agreement earlier, this is simply a slide show -- two
17 slide shows of camping trips that he went on with the
18 Venture crew.

19 (State's Exhibit Number 28 offered.)

20 MR. JAMES: We have a stipulation
21 there's nothing pornographic reported.

22 MR. PHELPS: Nothing pornographic, no.

23 MR. JAMES: All right.

24 THE COURT: So no objections then,
25 or --

1 MR. JAMES: Same objections previously
2 raised, Your Honor. I just want the stipulation
3 noted.

4 THE COURT: It is overruled, and that
5 will be admitted.

6 (State's Exhibit Number 28 admitted.)

7 Q. (By Mr. Phelps) And then, finally,
8 Investigator McCune, in your investigation of the
9 Defendant's computer, did you find evidence of online
10 chats by the Defendant with other people?

11 A. In the investigation or the examination of
12 the Western Digital Internal Hard Drive.

13 Q. Okay. Now, explain to the Court, if you
14 will, how you were able to recover these chat
15 sessions.

16 A. The chat server recovered were routed
17 through messenger chats. Generally, if someone uses
18 Yahoo Messenger, they have the option to either log
19 that chat or archive that chat or not to. And I do
20 believe the actual -- unless it's changed recently,
21 the default setting is to not log that chat. It just
22 takes up space on your computer.

23 On the -- it was the older internal
24 hard drive we're talking about that had come from a
25 previous computer. There was chats archived from

1 Yahoo Messenger.

2 Q. Okay. Now, were there -- let me show you
3 State's Exhibit Number 16. Does this exhibit contain
4 a number of those chat sessions with other people on
5 the Internet regarding sexual activity and meeting for
6 the purpose of sex?

7 A. Yes.

8 Q. Does it discuss graphically the sexual
9 proclivities of the Defendant?

10 A. Yes, sir.

11 MR. PHELPS: At this time, we'll offer
12 State's Exhibit 16.

13 (State's Exhibit Number 16 offered.)

14 THE COURT: Any objection?

15 MR. JAMES: Let me see it for a second.
16 Same objection previously lodged, Your
17 Honor.

18 THE COURT: Overruled.

19 Sixteen is admitted.

20 (State's Exhibit Number 16 admitted.)

21 Q. (By Mr. Phelps) Investigator McCune, in
22 these chat sessions, I mean, are you familiar with, I
23 guess, efforts by some folks to get on the computer
24 and find people to have sex with, that type of thing?
25 It does happen.

1 A. I'm not familiar with it.

2 Q. No, no.

3 A. I know what you mean. I haven't -- I don't
4 even have Messenger, but I'm familiar with it and how
5 it works.

6 Q. In these -- each one of these that's stapled
7 together as part of State's Exhibit 16, these
8 represent a separate chat? These are chats with a
9 separate user name other than the Defendant's?

10 A. Yes, sir.

11 Q. Now, is it possible for one person to have
12 multiple user names?

13 A. Yes, sir.

14 Q. But in this circumstance, there are separate
15 user names. For instance, this one is messageinbcs
16 speaking with cs_tx_guy?

17 A. Yes, sir.

18 Q. This one is tomfinn100 and so on?

19 A. Yes.

20 Q. Did you -- were you able to determine
21 cs_tx_guy was, in fact, the Defendant?

22 A. Yes, sir, under one of his users on his
23 computer, User Gregg, there was a link to a Yahoo
24 email cs_tx_guy.

25 Q. Now, as far as you can tell in State's

1 Exhibit Number 16, there is no contact with any
2 children or anything?

3 A. I didn't -- I didn't see any contact with
4 children.

5 Q. Also, there are dates listed on those chats
6 on the top of each page?

7 A. Yes, sir.

8 Q. Do you recall -- or do you need to look at
9 what is the earliest date?

10 A. I probably need to look at it. I haven't
11 read through that stuff in a little bit.

12 Q. There was a date at the top of this chat
13 dated 1/24/2006?

14 A. Yes, sir.

15 Q. Okay. Is that accurate in terms of when
16 those dates occurred -- those chats occurred?

17 A. That is the date put on there by Yahoo
18 programs.

19 Q. Okay. So March 2006, March 2006, March 2006
20 and so on. So these dates, the Judge can look at
21 these and see at least with respect to this set of
22 chats, that's when it occurred?

23 A. Yes, sir.

24 Q. And in your examination of the Defendant's
25 computer and his peripherals, did you find any

1 photographs of the Defendant involved with any sex
2 acts with children?

3 A. No, sir.

4 Q. Thank you.

5 MR. PHELPS: Your Honor, I pass the
6 witness.

7 MR. JAMES: Your Honor, for the record,
8 my Cross-Examination is being necessitated by the
9 Court's ruling. The Court has not made those rulings
10 on the Due Process grounds as well as the search
11 issue, or I would not have those questions for the
12 witness.

13 THE COURT: Okay.

14 **CROSS-EXAMINATION**

15 BY MR. JAMES:

16 Q. Couple of clarifications. One, you -- you
17 prepared an exhibit that showed some bondage of
18 adults. Sitting next to it was bondage of children.
19 That's on the exhibit. That wasn't prepared -- that
20 wasn't the way it was on his computer, was it?

21 A. Correct, it did not come off the computer
22 that way. And if you look at that exhibit, there are
23 file names beside each photo of the name the way it
24 was on the computer.

25 Q. Okay. So, in fact, they were on different

1 computers, different hard drives, weren't they?

2 A. No, sir, not necessarily. They -- they
3 could have been on the same computer, just in
4 different locations.

5 Q. You don't know where they were?

6 A. I could find them. I don't know off the top
7 of my head.

8 Q. Off the top of your head, but you're not
9 making that representation?

10 A. That they were together, no, sir.

11 Q. Okay. You've been working these kinds of
12 cases for a long time. It's not uncommon for people
13 who actually engage in these -- they engage in those
14 acts to keep some sort of trophy photographs and that
15 sort of thing; is that right?

16 A. Which type?

17 Q. Any kind of -- well, for instance, there are
18 photos of the Defendant, you testified, engaged in
19 bondage and in adult homosexual activity; is that
20 correct?

21 A. Yes, sir.

22 Q. Okay. But you didn't find any photos or
23 anything in the house indicating that he had ever had
24 contact with any children, did you?

25 A. I only searched the computer; but no, sir, I

1 didn't find anything.

2 Q. Okay. And it's certainly not uncommon for
3 people who engage in contact with children to keep
4 some sort of trophy like that? That's pretty common?
5 I've been told that's the case?

6 A. Yes, sir.

7 Q. You were talking about the websites. There
8 were literally hundreds of websites that were marked.
9 Most of them things like Time and CNN; is that fair?

10 A. I believe if you look through them, it's
11 probably half and half. The vast majority are
12 pornographic -- pornography-related, and probably half
13 of legitimate websites.

14 Q. Okay. And Detective McCune, we had a little
15 conference earlier. You would be amenable to going
16 through and getting information so that we can
17 identify exactly which -- give me some information
18 about exactly which photos or videos are the source of
19 the pleas in this case. You can do that?

20 A. Sure. I don't know which they are, but
21 y'all tell me, and I can find them.

22 Q. We can work that out. Ray's doing that.

23 MR. JAMES: I'll pass the witness.

24 MR. PHELPS: I have nothing further.

25 THE COURT: You can step down.

1 THE WITNESS: Thank you.

2 THE COURT: Let's take a ten-minute
3 break.

4 (Recess, 10:33 a.m. to 10:52 a.m.)

5 THE COURT: All right. We ready to
6 proceed?

7 MR. PHELPS: Yes, sir.

8 THE COURT: Okay. Raise your right
9 hand, please, sir.

10 MICHAEL SHEETS,
11 having been first duly sworn, testified as follows:

12 THE COURT: Have a seat.

13 MR. PHELPS: We just have a proffer of
14 evidence, again, pursuant to our agreement that these
15 are items that are taken from the Defendant's bedroom
16 pursuant to the search warrant. I'll try to do them
17 in order, but probably won't.

18 State's Exhibit 18, which is a book
19 found in the Defendant's bedroom.

20 State's Exhibit 19, State's Exhibit 20,
21 State's Exhibit 21, State's Exhibit 22, State's
22 Exhibit 23, State's Exhibit 24, State's Exhibit 25,
23 State's Exhibit 26 and State's Exhibit 27.

24 I think I've shown them to Mr. --

25 (State's Exhibit Numbers 18 through 27

1 offered.)

2 MR. JAMES: Yeah. What's this one?

3 Same objection as previously lodged

4 here.

5 THE COURT: It will be overruled.

6 Seventeen -- or excuse me -- 18 through

7 27 are now admitted into evidence.

8 (State's Exhibit Numbers 18 through 27

9 admitted.)

10 THE COURT: All right. Go right ahead.

11 **DIRECT EXAMINATION**

12 BY MR. THOMAS:

13 Q. All right. Mr. Sheets, please state your
14 name for the record.

15 A. My name is Michael Alan Sheets.

16 Q. And what did you do, sir?

17 A. Recently retired from the Sam Houston Area
18 Council of Boy Scouts of America.

19 Q. And so you were actually an employee of the
20 Boy Scouts of America?

21 A. Yes, I was.

22 Q. And how long did you work for them?

23 A. I worked for them 27 and a half years.

24 Q. And what all did you do as an employee for
25 the Boy Scouts of America over that 27 years?

1 A. From working in the field, I became Council
2 program director, served in advancement and training
3 issues; and then 18 years ago, I picked up a new
4 responsibility of standards of membership, youth
5 protection, criminal background checks and legal
6 affairs for the Council.

7 Q. And what do you do now that you're retired?

8 A. I recently retired. I haven't done it. I
9 will teach privately certification courses starting in
10 January.

11 Q. And this week, you actually were at the
12 100th Anniversary Jamboree?

13 A. Yes, I'm in from Fort AP Hill, Virginia for
14 the -- for National Scout Jamboree.

15 Q. And because we contacted that office and
16 asked for somebody to come, you were the nominee to
17 fly back from the Jamboree?

18 A. I am -- yes, sir, I'm the designee.

19 Q. Now, back in January of 2010, our office
20 spoke to you and requested some records concerning
21 Gregg Baird, and you did send us some records?

22 A. That is correct.

23 Q. Okay. And you sent us also the business
24 record affidavit?

25 A. Yes, I did.

1 MR. THOMAS: Your Honor, at this time,
2 we would offer State's Exhibit 29, which has
3 previously been entered in the Court's file. It is a
4 business record affidavit signed by Mr. Sheets for the
5 Boy Scouts of America.

6 (State's Exhibit Number 29 offered.)

7 THE WITNESS: I'm also the record
8 keeper.

9 MR. JAMES: No objection.

10 THE COURT: Twenty-nine's admitted.

11 (State's Exhibit Number 29 admitted.)

12 Q. (By Mr. Thomas) And you have a copy of this
13 record to refer to, don't you?

14 A. Yes, sir, I do.

15 Q. Okay. Now, as a -- in your position in all
16 your time with the Boy Scouts of America, when you
17 pulled up these records and looked at the different
18 affiliations or registrations or training that someone
19 has, you would be familiar with pretty much everything
20 that could be out there?

21 A. Yes, I am.

22 Q. And when you looked for records concerning
23 Gregg C. Baird, were you, in fact, able to find some
24 affiliations that he had with the Boy Scouts of
25 America?

1 A. At one point, he had affiliation with the
2 Boy Scouts of America.

3 Q. And the exhibit we tendered to the Judge,
4 the two pages that shows as an adult for a registered
5 period of time that Mr. Baird was involved in the Boy
6 Scouts?

7 A. Yes, it shows from -- up until his
8 registration he did not recharter on that on March the
9 30th of 2009. We compute -- changed computerized
10 records, so this picks up with the registration of
11 2000 or actually 19- -- the year 1999, and there may
12 be other records that we would not have. This is what
13 we would have personally here at the Council office.

14 Q. And just draw your attention to one thing
15 towards the bottom of the first page, it talks about
16 ranks?

17 A. Yes.

18 Q. It says that on February 8th of 1989, the
19 rank of Eagle. Does that show that Mr. Baird was --

20 A. It shows that he's an Eagle Scout.

21 Q. So as a child or a young man, he, obviously,
22 came up through Scouting as well?

23 A. Yes, sir.

24 Q. And these records here show that starting in
25 2000 the different affiliations and so forth he had as

1 an adult?

2 A. That -- yeah. In fact, if I go through the
3 BSA registrations, there's a point there where it
4 says: Expired, December 31st, 1998; shows that he's a
5 member at large on the district committee and not --
6 in his affiliation with a unit. This shows expiring
7 January 31st, 2000, as a committee member of Crew 1.

8 Q. Okay.

9 A. And so one is with the district
10 registration, and the other is with a unit
11 registration.

12 Q. Okay. And I guess, first, we need to talk
13 about when -- this, obviously, is the Boy Scouts of
14 America overall. It covers the whole country. When
15 you're talking about a district, for us right here --

16 A. Yeah.

17 Q. -- in this area, how -- what does a district
18 mean; and what is our district?

19 A. Okay. There's 16 and a half counties in the
20 Sam Houston Area Council. The district is a
21 geographical area with leadership of Brazos, part of
22 Bryan County. This will actually go all the way to
23 College Station and Bryan, will go over to
24 Madisonville and up to Hearn as what they call the
25 Arrowmoon District.

1 Q. Okay. So when we look at this form, and we
2 see District of Arrowmoon, is that one in the same
3 Arrowmoon District?

4 A. Yes, it is.

5 Q. And that's under -- or it's one of the
6 districts under the Sam Houston Area Council?

7 A. That's correct.

8 Q. Which goes from Hearn pretty much down to
9 Galveston?

10 A. Yeah, and it goes from Madisonville to
11 Huntsville, Trinity, Mount Bellview down to -- not
12 Galveston. Galveston would be a separate council, and
13 it will go down to Friendswood, part of -- half of
14 Friendswood over to Bay City back up to Sealy/Columbus
15 area and Weimar, back to Hempstead, and then makes
16 that -- makes that loop of 16 and a half counties.

17 Q. Okay. And then when we get within the
18 district, then we see something like the Venture Crew,
19 the District broken down into smaller entities such as
20 troops, Cub Scout packs and Venture crews?

21 A. Yeah, right. The districts will help the
22 programs of the Boy Scouts. In the Boy Scouts, you
23 have the Cub Scouting Program, which is the packs.
24 The Boy Scouting Program, which is the troops and
25 teams, varsity teams; and then you have the Venturing

1 programs which are crews as far as the traditional
2 Scouting programs.

3 Q. And as far as Mr. Baird's record, it shows
4 his involvement as an adult leader with a Venture
5 crew?

6 A. That is correct.

7 Q. And so the Judge knows, what is -- as
8 opposed to a Boy Scout troop, give a general idea of
9 what a Venture crew is. Are we talking about --

10 A. A Venture crew is for young people, boys and
11 girls, from age -- actually, the eighth grade, 14 or
12 the eighth grade -- complete the eighth grade up and
13 to -- through the age of 20 up and to they're 21 from
14 that aspect. So a crew can be coed or a non-coed up
15 to whatever the Charter organization deems it.

16 All the units within the Scouting
17 program enter into an annual agreement with charter
18 organizations who agree to use the Scouting program as
19 their youth program. We do not own the units. The
20 charter organization does. So when I look at charter
21 organizations, they're the ones that say: We're going
22 to use Scouting for our youth program.

23 Q. Okay. And then the charter organization
24 also keeps track of their leaders and checking up
25 on --

1 A. Yes, they -- they --

2 Q. -- and who they are and so forth?

3 A. The charter organization approves the
4 leadership, and they -- on the application that we
5 sent to Council office; and as of 2008, it was --
6 we'll do the processing and approve the manager and do
7 criminal background checks from that aspect.

8 Q. And let me ask you this: When you become
9 any kind of Boy Scout leader, a registered leader, in
10 the records like this, is there training you have to
11 go through?

12 A. At this time, it is. When the Defendant was
13 registered, it was recommended, wasn't mandatory.
14 It's mandatory today.

15 Q. Okay. And does his record show that he has
16 been through some training?

17 A. It shows that he has been through training.
18 He's been through the Adult Explorer Leadership
19 Training, which was a predecessor of Venturing
20 program, the old Explorer post; and it shows that he
21 has taken New Leader Essentials, a little bit about
22 the Cub Scouting program and Venturing Basics and then
23 Youth Protection Training and Venturing Leaders
24 specific training, which would include the Youth
25 Protection Program which would include personal safety

1 awareness.

2 Q. Okay. And Youth Protection Training, that's
3 something that has to be -- you don't just take that
4 once. You have to take it every so often; isn't that
5 correct?

6 A. During this time period, you could take it
7 once unless you were going on a national trip. I can
8 tell you that the rules have changed this year as in
9 every leader must have it, and it must have been done
10 annually.

11 Q. Must have it.

12 A. And we recommended it every two years prior
13 to that.

14 Q. Okay. Now, go back and look at the first
15 page. Looking at the different positions Mr. Baird's
16 been in, I guess, as briefly as possible if you could
17 run through for the Judge the different positions and
18 registrations he's been in, what level he's been
19 involved with the Venture Crews and what exactly that
20 position does when he's in that.

21 A. Okay. In here, there's been several charter
22 organizations. At one point, St. Michael Academy was
23 the charter organization.

24 If you look at the dates, there's the
25 corresponding requisition. The exec officer or the

1 institutional head is the key person who we sign the
2 agreement with. The charter organization
3 representative interfaces between the committee and
4 the charter organization.

5 There was a change for a year. Aggie
6 Credit -- Aggieland Credit Union was the charter
7 organization, and then currently the charter
8 organization, as of 2005, 2000 -- as of 2000 --
9 starting at the end of 2006, the Kiwanis of -- it's
10 not on here -- the Kiwanis of the -- of College
11 Station, which at the time left that -- that key
12 leadership role within the unit and became a direct
13 contact leader, which is as an associate advisor.

14 Q. Okay. So when we look at under Unit
15 Registration, from January 2000 through March 2004,
16 that's when he is more maybe in an administrative
17 role, doing the --

18 A. Generally speaking, it's more of an
19 administrative role to ensure that the program
20 happens. Now, different organizations have different
21 degrees of working whether they're working with youth;
22 but generally speaking, it's an administrative role.

23 As you come in here, where it says the
24 Venturing Crew Associate Advisor, that's the direct
25 contact. That's the person who's working with the

1 youth on a weekly or monthly basis.

2 Q. Okay. So from March 2005 on through to the
3 time that he's not reregistered, this shows that he's
4 in one of those direct contact positions with --

5 A. Yeah, sometime prior to that, in 2004,
6 that's a re -- that's an expiration date. So the unit
7 expired and directly reregistered in 2005. So
8 sometime between that 2004 and that early 2005, he
9 started as an associate advisor.

10 Q. Okay.

11 A. And then as far as that actual Venture Crew
12 Number 1, the only thing as far as I think that crew
13 is how many kids are involved. It ranged from roughly
14 10 to 20 over the years. I think there were about 18
15 people active.

16 Q. And then as a Crew Associate Advisor for a
17 Venture Crew, did he only associate with those 10 or
18 20 kids, or did he have an opportunity to also
19 associate with other Venture Crew kids or --

20 A. You have the opportunity to associate with
21 other Venturing Crews and activities, depending on the
22 program of that crew. It's very common for Venturing
23 Crews in an area to get together to do something and
24 so on.

25 Q. All right. And then we have, I know, in

1 evidence here some photographs from the 2005 summer
2 trip. I believe this is Glacier National Park with a
3 Venture Crew. That was a nine- or ten-day trip.
4 Would that be a typical type of trip that a Venture
5 Crew would take?

6 A. If they were using the High Adventure
7 Program, yes, it would.

8 Q. Okay.

9 A. Venturing Crews can have different
10 specialties. For example, one could be around the
11 Indian Dancing area. One could be strictly high
12 adventure like going to Glacier Park. One could be
13 working with the youth fellowship of a church.
14 There's a lot of flexibility within Venturing Crew on
15 what they do.

16 Q. Okay. In any of these positions that
17 Mr. Baird's held over the years, since each charter
18 organization or crew or troop more or less controls
19 their leaders and who gets in, were any of the
20 positions he had, would he have been in a position of
21 helping to decide other leaders coming in --

22 A. Yes.

23 Q. -- and appropriateness or not?

24 A. Yes.

25 Q. And which positions would that have been?

1 A. That would be into the charter organization,
2 executive officer institutional head. Those are --
3 when an adult fills out an application, they must be
4 approved by the charter organization; and his
5 signature should appear on that application as
6 approving them for adult leader. It goes to the
7 Council office, and then we have a secondary approval
8 process.

9 We listen to the charter organization
10 and approve the leaders unless someone does not meet
11 the complete standards of the Boy Scouts of America.

12 Q. Then each actual charter organization, then
13 they -- it would be up to them to check somebody's
14 background and do a background check, find out if they
15 have anything in their background that makes them
16 unfit as much as possible for them to do so?

17 A. Well, yeah, informally, that was done on the
18 application through references; and some may have done
19 that. The Boy Scouts of America instituted criminal
20 background checks for all Scouting leaders seven years
21 ago. Three years ago or two years -- three years ago,
22 it -- anybody who was a registered leader was
23 grandfathered in with no criminal background check.
24 As of August the 1st, 2008, all leaders underwent a
25 criminal background check, or they were removed from

1 the Scouting program.

2 Q. Okay. And if someone had arrests -- felony
3 arrests or felony charges in their -- in the past,
4 would the Boy Scouts be interested in finding out what
5 that is and finding out if they have that, whether
6 it's something that they think would be appropriate or
7 not in being a leader?

8 A. Absolutely. That is what I do. When I
9 referred to standards of membership, that was my key
10 role with the Sam Houston Area Council that we use
11 Lexis Nexis now. We did Choice Point at the time. We
12 do a criminal background check based on Social
13 Security number and key points. I would receive the
14 criminal background check. I would look at that
15 information. If it met certain standards, they were
16 not going to be a leader. If they were marginal, we
17 would talk with the charter organization. If not,
18 then they were apprized of their leader.

19 Q. And then part of it also was the applicant
20 applying and saying: I want to be a Boy Scout Leader.
21 Is a part of that application process also relying on
22 that person to list on their application everything
23 that the Boy Scouts may be interested in knowing that
24 could be a concern or not about their background?

25 A. That's correct.

1 MR. JAMES: Could we -- it might save a
2 minute if I can go over with Mr. Thomas --

3 Q. (By Mr. Thomas) What's Mr. Baird's status,
4 if any, with the Boy Scouts?

5 A. He is not registered with the Boy Scouts of
6 America. He did not reregister. At the time that
7 there was charges or indictment, he was put on an
8 ineligible list. He will not be able to register with
9 the Boy Scouts of America.

10 Q. And if the Boy Scouts of America or the Sam
11 Houston Area Council or an individual charter
12 organization found out someone was a person who
13 collected or viewed child pornography, would that be
14 concerning to the Boy Scouts?

15 A. That's what we call a Category 1 offense or
16 charge. That is one of four that will not allow you
17 to be a member of the Boy Scouts of America at any
18 time.

19 MR. THOMAS: I pass the witness, Your
20 Honor.

21 CROSS-EXAMINATION

22 BY MR. JAMES:

23 Q. You said that this indicates that Gregg
24 became an Eagle Scout in 1989; is that right?

25 A. That's correct.

1 Q. And that's, as far as the Boy Scouts
2 function, that would be sort of the highest rank or
3 the highest position that you can obtain in the Boy
4 Scouts function; is that right?

5 A. It's the highest advancement recognition
6 that a youth can earn within the Boy Scouts of
7 America.

8 Q. And that was 1989. So it appeared that
9 Gregg grew up in Scouting; is that right?

10 A. Yes, sir.

11 Q. He didn't just come along later; is that a
12 fair statement?

13 A. That is a fair statement.

14 Q. Okay. And not just any criminal offense
15 will just disqualify somebody from being a Scout
16 leader. I understand child pornography certainly
17 would, but not just any criminal offense?

18 A. Yeah, it -- there's assault, any injury to a
19 disabled or to a child. Those are things that we're
20 going to weed out.

21 Q. Right.

22 A. That's correct.

23 Q. Okay. And you said Venture Crew, 14 to 21;
24 is that right?

25 A. Up and to 21.

1 Q. Fourteen?

2 A. Fourteen. But now, it's complete the eighth
3 grade; so you can conceivably be 13 through the age of
4 21.

5 Q. And you certainly never got any kind of
6 complaints about Gregg Baird having any kind of
7 improper contact with anybody?

8 A. No, I did not.

9 MR. JAMES: Pass the witness.

10 MR. THOMAS: No further questions for
11 Mr. Sheets.

12 THE COURT: You can step down, sir.
13 Call your next.

14 MR. THOMAS: May he be excused, Your
15 Honor?

16 THE COURT: You're excused.

17 MR. SHEETS: All right. Thank you,
18 Your Honor.

19 MR. THOMAS: We call Deputy Pittman.

20 THE COURT: Raise your right hand,
21 please, sir.

22 KINDALE PITTMAN,

23 having been first duly sworn, testified as follows:

24 THE COURT: Have a seat.

25 Go right ahead.

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Okay. Please state your name.

A. Kindale Pittman.

Q. Okay. And who do you work for now?

A. Grimes County Sheriff's Office.

Q. And what do you do for Grimes?

A. I'm a patrolman.

Q. How long have you been with the Grimes
County Sheriff's Department?

A. Approximately two and a half years.

Q. And where did you work before that?

A. Milam County Sheriff's Office.

Q. And what did you do for Milam County?

A. Patrol, and I was assigned as a criminal
investigator.

Q. How long did you work for Milam?

A. Approximately three years.

Q. And where did you work before that?

A. Somerville Police Department.

Q. And how long did you work for Somerville?

A. Approximately three years.

Q. And what did you do for them?

A. I was a patrol officer.

Q. And any more law enforcement before that?

1 A. Just jail experience.

2 Q. As a jailor?

3 A. Yes, sir.

4 Q. How long were you a jailor?

5 A. Altogether, approximately, maybe two years.

6 Q. Okay. Total, how long have you been in law
7 enforcement?

8 A. I'd have to say almost ten years.

9 Q. And how long have you been a certified Texas
10 peace officer?

11 A. Since 2001.

12 Q. Now, I'm going to ask you back when you
13 worked for Somerville Police Department.

14 A. Okay.

15 Q. Back when you worked for Somerville Police
16 Department, were you working on May 12th of 2004?

17 A. Yes, sir.

18 Q. And do you recall what shift you worked way
19 back then?

20 A. I believe I worked 6:00 p to 6:00 a, deep
21 night shift.

22 Q. Did you have to work 12 hours back then?

23 A. Yes, sir.

24 Q. And did you work alone or with a partner?

25 A. I worked alone.

1 Q. And did you wear a uniform for the
2 Somerville Police Department?

3 A. Yes, sir, I did.

4 Q. And did you drive a marked patrol unit with
5 lights on the roof and "Police" on the side for
6 Somerville?

7 A. Yes, sir, I did.

8 Q. Now, the incident that we're talking about
9 today, May 24th -- May 12th of 2004, did you write a
10 report concerning that incident?

11 A. Yes, sir.

12 Q. And have you reviewed that prior to
13 testifying today?

14 A. I'm sorry?

15 Q. Have you reviewed that report prior to
16 testifying today?

17 A. Yes, sir, I have.

18 Q. Okay. And back on May 12th of 2004, a
19 little before 11:00 p.m. that night, you -- were you
20 patrolling around the Somerville High School?

21 A. Yes, sir, I was.

22 Q. And is that an area you had patrolled
23 before?

24 A. Yes, sir.

25 Q. And what -- do you remember what day of the

1 week this was?

2 A. According to my report, it was on a Monday.

3 Q. Okay. Now, 11:00 p.m. on a Monday night at
4 Somerville High School, was there very much
5 activity that you would expect at that kind of time?

6 A. No, sir.

7 Q. Okay. Was there something at Somerville
8 High School that night that caught your attention or
9 may have been suspicious?

10 A. Yes, sir.

11 Q. What was that?

12 A. It was a vehicle sitting beside the track
13 area. Upon my arrival, the vehicle noticed -- upon it
14 noticing me, it sped away.

15 Q. Okay. Now, do you remember what kind of
16 vehicle it was?

17 A. Initially, I didn't notice what type of
18 vehicle it was until after fleeing from me and
19 becoming stuck in a ditch. It was -- if I'm not
20 mistaken, it was a gray 2000 Chevrolet SUV.

21 Q. Okay. And when you -- just, if you could
22 for the Judge, describe when you say the vehicle was
23 near the track area, just briefly how the high school
24 property is laid out and if that was a parking lot or
25 grass or whatever it was where the car was by the

1 track?

2 A. If I remember correctly, it was still under
3 construction at that time. They were still doing a
4 lot of work in the area. You had the gymnasium; and
5 then approximately, I would say, 100 yards in the rear
6 of the gymnasium was the track, and then the tennis
7 court's to the right of the track. I'd say the tennis
8 court's, approximate -- maybe -- say, maybe 75 yards
9 from the track to the right of the track.

10 Q. And this area that the vehicle was in, was
11 it a parking lot area or a grass-type area?

12 A. If I remember -- I can't remember correctly.
13 I believe it may have been grass.

14 MR. JAMES: Judge, I'm going to object.
15 That's speculative, Judge, if he doesn't remember. I
16 understand the past recollection is recorded; but if
17 he's not sure today, he doesn't know, then that would
18 be speculation.

19 THE COURT: Sustained.

20 Q. (By Mr. Thomas) Is that -- 11:00 o'clock on
21 a Monday night, is that an area where you would expect
22 to see a vehicle?

23 A. No, sir.

24 Q. Okay. And do you recall if the vehicle had
25 his lights on and off?

1 A. I don't recall.

2 Q. And like I said, were you ever -- were you
3 able to approach the vehicle; or as you said, did it
4 leave before you could do that?

5 A. Left before I could do that.

6 Q. And which direction did it leave in?

7 A. It turned around and started traveling, I
8 believe, eastbound.

9 Q. And when you came in, did you have your
10 lights -- not your emergency lights -- but did you
11 have your headlights and taillights and so forth on?

12 A. Yes, sir, I did.

13 Q. As a police officer and when you see a
14 vehicle that's in a possibly suspicious position, does
15 it raise your suspicions anyway if it just takes off
16 like that?

17 A. Yes, sir.

18 Q. And why is that?

19 A. What's -- why is it --

20 Q. Why would you become more suspicious of a
21 vehicle that takes off before you can approach it?

22 A. Illegal activity possibly.

23 Q. And did you attempt to go after the vehicle
24 to find it?

25 A. Yes, sir, I did.

1 Q. Were you able to see where this vehicle went
2 or was located?

3 A. Yes, sir, I was able to locate the vehicle.

4 Q. Okay. Where did you locate it at?

5 A. It became stuck behind the gymnasium parking
6 lot.

7 Q. Okay. It was stuck -- stuck in a ditch?
8 Stuck in a --

9 A. Yeah.

10 Q. And would that be an area where folks should
11 be driving, in a ditch?

12 A. No.

13 Q. Okay. And when you saw the vehicle stuck in
14 that ditch, where were the persons or people that were
15 in the vehicle?

16 A. He was walking towards me.

17 Q. Okay. And do you see that same person in
18 the courtroom today?

19 A. Yes, sir.

20 Q. And could you, just for the record purposes,
21 describe where he is seated and what he's wearing?

22 A. He's seated to the right of me wearing a
23 white shirt and yellow tie.

24 Q. And were you able to identify who that
25 person was?

1 A. Gregg Baird.

2 Q. Were you able to determine if anybody else
3 was with him at that point in time?

4 A. Yes, sir, there was nobody else with him.

5 Q. Okay. And I forgot if I asked you this.
6 When you first -- after -- when you first saw the
7 vehicle and it took off and you began after the
8 vehicle to pursue it, did you turn on your emergency
9 lights or emergency equipment?

10 A. Yes, sir.

11 Q. The lights?

12 A. Yes, sir, overhead lights.

13 Q. Did you use your siren at all?

14 A. No, I didn't.

15 Q. And when you saw Mr. Baird, did he approach
16 you; or did you have to call him over to you; or what
17 happened?

18 A. He was walking towards me at that time, and
19 I instructed him to get on the ground and took him
20 into custody without incident.

21 THE COURT: I didn't hear you. What
22 did you say?

23 THE WITNESS: I instructed him to
24 position himself on the ground and took him into
25 custody without incident.

1 THE COURT: Okay.

2 Q. (By Mr. Thomas) Did he make any statement
3 to you at all about why he was out there, or what he
4 was doing?

5 A. He didn't say what he was doing, no. Just
6 made the statement that he was in a place he shouldn't
7 have been in, and he was stupid for fleeing from me.

8 Q. He said he was in a place he shouldn't have
9 been in and what, sir?

10 A. That he was stupid for fleeing from me.

11 Q. Okay. What did you arrest Mr. Baird for?

12 A. Evading detention.

13 Q. Okay. I imagine you booked him into the --
14 what is it, the Burlson County Jail there?

15 A. Yes, Burlson County, yes, sir.

16 MR. THOMAS: Pass the witness.

17 MR. JAMES: Pass the witness.

18 THE COURT: You can step down, sir.

19 MR. THOMAS: May he be released, Your
20 Honor?

21 THE COURT: You're released.

22 MR. THOMAS: Thank you, Your Honor.

23 At this time, we'd offer State's
24 Exhibit Numbers 30 and 31, which are certified copies
25 from the Burlson County District Clerk's Office.

1 (State's Exhibit Numbers 30 and 31 offered.)

2 MR. JAMES: No objection, Your Honor.

3 THE COURT: Exhibits 30 and 31 are
4 admitted.

5 (State's Exhibit Numbers 30 and 31
6 admitted.)

7 MR. THOMAS: For the record, 30 is a
8 copy -- certified copy of a criminal indictment, Cause
9 Number 12856 in the 21st Judicial District Court of
10 Burlson County, indictment for evading arrest with
11 vehicle; and Number 31 is the corresponding judgment
12 on a plea of guilty waiver of trial in order of
13 deferred adjudication for the same offense concerning
14 this Defendant.

15 With that, Your Honor, we rest.

16 THE COURT: Do you want to proceed now
17 or after lunch?

18 MR. JAMES: Judge, with -- if we can
19 approach?

20 THE COURT: Come on up.

21 MR. JAMES: Originally, we thought this
22 was going to be a two-day. I understand that
23 was pared down. We've prepared for our witnesses to
24 be here at 2:00 o'clock.

25 THE COURT: All right. 2:00 o'clock.

1 We'll resume at 2:00 o'clock.

2 MR. JAMES: Thank you.

3 (Lunch recess, 11:25 a.m. to 2:01 p.m.)

4 THE COURT: Be seated. We ready to
5 proceed?

6 MR. JAMES: Yes, Your Honor.

7 THE COURT: Mr. Thomas?

8 MR. THOMAS: Yes, sir.

9 THE COURT: Okay. Go right ahead.

10 MR. JAMES: We call Nathan McCune up.

11 THE COURT: You're under oath already,
12 right?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay.

15 NATHAN MCCUNE,

16 having been previously duly sworn, further testified
17 as follows:

18 **CROSS-EXAMINATION**

19 BY MR. JAMES:

20 Q. Mr. McCune, just a couple of things.

21 Did you go back and get the images that
22 are the basis of these convictions and locate the
23 computer that they were on as well as the date of
24 download and correspond those counts to the number of
25 the CD that is in evidence?

1 A. Yes, sir.

2 Q. Okay.

3 A. Not as far as corresponding them to the
4 number. It would be Number 8 through 17 on the one.

5 Q. Right. Okay. And then you also did the
6 same with the other counts so that the Court could go
7 back and say: This photo or this video matches this,
8 and this is the basis of the case?

9 A. We did not do that for the other 90 in the
10 criminal case. I was directed to do it for only the
11 counts that are charged here.

12 Q. So these others are not -- this doesn't
13 correspond to the number on the video?

14 A. Yes, sir, it does correspond with the number
15 on the video.

16 Q. Okay.

17 A. I'm saying I didn't locate which drive they
18 were on for you and all that.

19 Q. Okay. That's fine. The others just show
20 the number that it is on the video; but for the ten
21 counts, we've got the number on the CD and then the
22 location and then the date down below?

23 A. Yes, sir.

24 Q. Is that right?

25 A. Yes, sir.

1 Q. And then I'll show you what's been marked as
2 Defendant's Exhibit 1. Was that prepared by you, and
3 is that an accurate reflection of the counts, the
4 number on the CD and the date downloaded for the ten
5 counts that are in question here today?

6 A. It was prepared by ADA Ray Thomas. I
7 watched him prepare this, so it is accurate.

8 MR. JAMES: I'd offer Defendant's
9 Exhibit 1.

10 (Defendant's Exhibit Number 1 offered.)

11 MR. THOMAS: Let me see because I
12 haven't seen it.

13 MR. JAMES: Okay.

14 MR. THOMAS: Judge, the only
15 stipulation I would make is I think that the best
16 record of -- let me put it this way: On the exhibit
17 with the hundred that we showed you and the other one
18 in its entirety, they have the cause number on the
19 count number, and I think file numbers; is that right?
20 The file names?

21 THE WITNESS: File names, yes, sir.

22 MR. THOMAS: And those correspond to
23 what was actually pled to by the Defendant. That's
24 the best record. I think that's clear. I don't have
25 any objection to this coming in. I don't want this to

1 be the substitute for what was --

2 MR. JAMES: It's a synopsis. I think
3 it comes in under --

4 MR. THOMAS: I don't have any objection
5 to it. I just want to make sure that the record is
6 clear.

7 THE COURT: All right. We'll let it
8 in. It's admitted. Defendant's 1.

9 (Defendant's Exhibit Number 1 admitted.)

10 Q. (By Mr. James) And Mr. McCune, I believe you
11 earlier testified that you can download literally
12 hundreds, maybe thousands of images in one stroke; is
13 that right? I mean, that's -- that's --

14 A. In a short period, yes, sir.

15 Q. Yes. Okay. And you may not even know the
16 number that you're downloading?

17 A. I guess that's different with different
18 sites. I don't know if they tell you how many files
19 that are on the site.

20 Q. But it may be a large -- a very large
21 number?

22 A. Could be, yeah.

23 Q. And you went through -- is it fair to say
24 that you went through all of the e-mails that you
25 found on that computer. And some of them are quite

1 graphic?

2 A. The chat session?

3 Q. The chat session, yes, sir.

4 And you didn't -- you didn't find any
5 indication that there were any children involved, did
6 you?

7 A. No, sir.

8 MR. JAMES: Pass the witness.

9 DIRECT EXAMINATION

10 BY MR. THOMAS:

11 Q. Investigator McCune, with respect to
12 Mr. James' question about downloading -- I mean, he
13 downloaded all of them, all 65,000 images?

14 A. Yeah, something like that. Starting in '04
15 and going through to '09.

16 Q. Are we taking about a few times that he's
17 downloading stuff, these files?

18 A. There's a lot of different dates on a lot of
19 the files.

20 MR. THOMAS: Pass the witness.

21 MR. JAMES: Nothing further.

22 THE COURT: You can step down.

23 MR. JAMES: We call Tom Rogers, Your
24 Honor.

25 THE COURT: All right.

1 Raise your right hand, please, sir.

2 THOMAS ROGERS,

3 having been first duly sworn, testified as follows:

4 THE COURT: Have a seat.

5 Go right ahead.

6 **DIRECT EXAMINATION**

7 BY MR. JAMES:

8 Q. Would you state your name, please?

9 A. Thomas Wayne Rogers.

10 Q. And how are you employed?

11 A. I do part-time work for the University doing
12 teaching. I'm also doing consulting.

13 Q. Okay. How long have you known Gregg Baird?

14 A. About ten years.

15 Q. Okay. And how did -- did you become
16 acquainted with Gregg through Scouting?

17 A. Yes.

18 Q. What kind of person did you know Gregg to
19 be?

20 A. An outstanding example of a Scout leader.

21 Q. Did you go on trips with him?

22 A. Many.

23 Q. Okay. Can you tell us some of the places --
24 this was with the Venture group; is this right?

25 A. Yes, sir.

1 Q. And this was a High Adventure Venture Crew;
2 is that correct?

3 A. That's correct.

4 Q. What does that mean? What kind of things
5 did y'all do?

6 A. Well, most of the things that -- the boys
7 become Eagle Scouts, and they get past 14. What
8 they're trying to do is get them out in the wilderness
9 and do things. With the Venture Crew, you have a
10 number of activities. We went to Boundary Waters. We
11 went to Minnesota. We went to Key West to do sailing.
12 We went to Glacier National Park. We went all over
13 the United States.

14 Q. When Gregg was on these trips, what kind of
15 a leader was he? Was he reliable?

16 A. Absolutely.

17 Q. Okay.

18 A. He -- I mean, Gregg was the one that would
19 always do the pre-organization, make sure we did all
20 the certifications, the training, watch the sexual
21 abuse tapes, watch the -- you know, all the things
22 that we're required to do in Scouts because there's a
23 lot of paperwork. Gregg always was the one that was,
24 if not doing it, having a boy do it.

25 Q. And was he a problem solver?